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P O BOX 980  
VALLEY FORGE, PA 19482-0980

EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT PAPER NUMBER

3622

DATE MAILED: 03/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/602,971

Applicant(s)  
H. Brock KOLLS

Examiner  
Stephen M. Gravini

Art Unit  
3622



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 3-11-03
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 21-23 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2, 3, 7, 8 6) ☐ Other:

Art Unit: 3622

## **DETAILED ACTION**

### ***Requirements for Information***

1. 37 CFR 1.105 states: (a) (1) In the course of examining or treating a matter in a pending or abandoned application filed under 35 U.S.C. 111 or 371 (including a reissue application), in a patent, or in a reexamination proceeding, the examiner or other Office employee may require the submission, from individuals identified under § 1.56(c), or any assignee, of such information as may be reasonably necessary to properly examine or treat the matter, for example:

- (I) Commercial databases : The existence of any particularly relevant commercial database known to any of the inventors that could be searched for a particular aspect of the invention.
- (ii) Search : Whether a search of the prior art was made, and if so, what was searched.
- (iii) Related information : A copy of any non-patent literature, published application, or patent (U.S. or foreign), by any of the inventors, that relates to the claimed invention.
- (iv) Information used to draft application : A copy of any non-patent literature, published application, or patent (U.S. or foreign) that was used to draft the application.

Art Unit: 3622

(v) Information used in invention process : A copy of any non-patent literature, published application, or patent (U.S. or foreign) that was used in the invention process, such as by designing around or providing a solution to accomplish an invention result.

(vi) Improvements : Where the claimed invention is an improvement, identification of what is being improved.

(vii) In Use : Identification of any use of the claimed invention known to any of the inventors at the time the application was filed notwithstanding the date of the use.

(2) Where an assignee has asserted its right to prosecute pursuant to § 3.71(a) of this chapter, matters such as paragraphs (a)(1)(I), (iii), and (vii) of this section may also be applied to such assignee.

(3) Any reply that states that the information required to be submitted is unknown and/or is not readily available to the party or parties from which it was requested will be accepted as a complete reply.

(b) The requirement for information of paragraph (a)(1) of this section may be included in an Office action, or sent separately.

(c) A reply, or a failure to reply, to a requirement for information under this section will be governed by §§ 1.135 and 1.136.

Art Unit: 3622

2. The Office requires submission of information or material reasonably necessary to properly examine the claimed invention. Information or material of particular interest to the Office would include product publications from applicant's assignee (USA technologies) that discusses the claimed subject matter. Other information or material that would assist in a thorough examination of the claimed invention would include how the claimed invention is an improvement over the prior art cited by the applicant and identification of what is being improved along with identification of any use of the claimed invention known to any of the inventors at the time the application was filed notwithstanding the date of the use.

### *Specification*

3. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set

Art Unit: 3622

forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

4. The abstract of the disclosure is objected to because it is not a single paragraph as required above and is too long as specified in the MPEP. Correction is required. See MPEP § 608.01(b).

Art Unit: 3622

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 19, 21, and 22 are rejected under 35 U.S.C. 101 because the claimed method does not recite a useful, concrete and tangible result under *In re Alappat*, 31 USPQ2d 1545 (Fed. Cir. 1994) and *State Street Bank & Trust Co. v. Signature Financial Group Inc.*, 47 USPQ2d 1596 (Fed Cir. 1998). Those independently claimed steps are abstract ideas which can be performed by a human being without mechanical interaction of a physical structure. A human is capable of the claimed communicating, routing, and determining (i.e. communicating can be provided between an in-vehicle device (a human voice) and an interface device (a human ear) such that the neurons to a human brain route and determine the spoken data processed as listened by the human ear) and the further claimed routing and communicating (i.e. acknowledging a spoken communication) can be performed wirelessly. Because the independently claimed invention is directed to an abstract idea capable of being performed by a human, which is considered naturally occurring, and does not require structural interaction or mechanical intervention, it does not produce a useful, concrete and tangible result, is not permitted under 35 USC 101 as being related to non-statutory subject matter. The dependently claimed invention is also rejected since those claims are dependent upon non-statutorily permitted subject matter. However in order to examine the claimed invention in light of the prior art, further rejections will be made on the

Art Unit: 3622

assumption that those claims are statutorily permitted. Claims 19, 21, and 22 are also rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1-19 and 21-23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In this case, the claimed method and system of data communicating between at least one vehicle and at least one data processing resource including the features of either a communication interface device having a second wireless network connectivity interface which



Art Unit: 3622

communicates with a first wireless network connectivity interface and a plurality of communication interfaces to communicate data between the second wireless network connectivity interface and a data processing resource to effectuate data communication between an in-vehicle device and the data processing resource or a communication interface device having a wireless interface which communicates data wirelessly with an in-vehicle installed device and a data processing resource which further communicates with a communication interface device, alternatively including digital content routing steps, are not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification recites this claimed concept but does not reasonably convey how a method and system of data communicating between at least one vehicle and at least one data processing resource including the features of either a communication interface device having a second wireless network connectivity interface which communicates with a first wireless network connectivity interface and a plurality of communication interfaces to communicate data between the second wireless network connectivity interface and a data processing resource to effectuate data communication between an in-vehicle device and the data processing resource or a communication interface device having a wireless interface which communicates data wirelessly with an in-vehicle installed device and a data processing resource which further communicates with a communication interface device, alternatively including digital content routing steps occurs such that one skilled in the art would be able to make or use the claimed invention. However in order

Art Unit: 3622

to examine the claimed invention in light of the prior art, further rejections will be made on the assumption that those claims are reasonably conveyed to those skilled in the art.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-19 and 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claimed method and system of data communicating between at least one vehicle and at least one data processing resource including the features of either a communication interface device having a second wireless network connectivity interface which communicates with a first wireless network connectivity interface and a plurality of communication interfaces to communicate data between the second wireless network connectivity interface and a data processing resource to effectuate data communication between an in-vehicle device and the data processing resource or a communication interface device having a wireless interface which communicates data wirelessly with an in-vehicle installed device and a data processing resource which further communicates with a communication interface device, alternatively including digital content routing steps fails to particularly point out and distinctly claim the subject matter which applicant because those steps are considered

Art Unit: 3622

indefinite from the accepted definitions to those skilled in the art and it is unclear that the specification provides adequate antecedent basis for those steps of how a method and system of data communicating between at least one vehicle and at least one data processing resource including the features of either a communication interface device having a second wireless network connectivity interface which communicates with a first wireless network connectivity interface and a plurality of communication interfaces to communicate data between the second wireless network connectivity interface and a data processing resource to effectuate data communication between an in-vehicle device and the data processing resource or a communication interface device having a wireless interface which communicates data wirelessly with an in-vehicle installed device and a data processing resource which further communicates with a communication interface device, alternatively including digital content routing steps are not indefinite. However in order to examine the claimed invention in light of the prior art, further rejections will be made on the assumption that those claims are not indefinite.

Art Unit: 3622

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-19 and 21-23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by DeLorme et al. (US 5,848,373) and are rejected under 35 U.S.C. 102(e) as being clearly anticipated by , Walker (US 5,157, 317), Reely (US 6,166,627), Colson et al. (US 6,181,994), Beckert et al. (US 6,202,008), Lumelsky (US 6,246,672), Alumbaugh (US 6,266,614), Schneck et al. (US 6,314,409), Ladner et al. (US 6,331,825), or Marko et al. (US 6,347,216).

13. Claims 1-19 and 21-23 rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. An internet search and a trademark database search has revealed that the claimed invention has been in public use or on sale for more than one year from the filing of the present invention. The applicant's assignee of USA Technologies or Telematics has been in public use for more than one year from the filing of the present invention. That term and assignee

Art Unit: 3622

information, including federal trademark applications, available on the world wide web clearly describe the claimed invention. Since the claimed invention has been in public use or on sale for more than one year from the filing of the present application, it is statutorily barred from patenting within the United States.

14. An issue of public use or on sale activity has been raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows: the earliest release date and availability of the above mentioned trademarks by the assignee of the claimed invention. Applicant is reminded that failure to fully reply to this requirement for information will result in a holding of abandonment.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 3622

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

17. Claims 1-19 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over an obvious variation of examiner's personal experience of a method and system of data communicating between at least one vehicle and at least one data processing resource as part of the examiner's personal experience with police radio or taxi cab operations. Since at least 1990, examiner has observed the claimed invention of a method and system of data communicating between at least one vehicle and at least one data processing resource comprising:

an in-vehicle device installed in a vehicle, said in-vehicle device having a first wireless network interface; and

a communication interface device, said communication interface device having:

a second wireless network interface, said second wireless network interface data communicates with said first wireless network interface; and

a plurality of communication interfaces, said plurality of communication interfaces communicate data between said second wireless network interface and a source to effectuate data communication between said in-vehicle device and said source; or

Art Unit: 3622

a communication interface device, said communication interface device having a wireless interface, said wireless interface communicates data wirelessly with an in-vehicle device, said in-vehicle device, said in-vehicle device being installed in a vehicle; and

a source, said source data communicates with said communication interface device; wherein said in-vehicle device by way of said communication interface device data communicates with said source; or

communicating a plurality of content wirelessly between an in-vehicle device and a communication interface device;

routing said plurality of content from said communication interface device to a source; determining at said source a plurality of return content; routing said plurality of return content to said communication interface device; and communicating said plurality of return content wirelessly between said communication interface device and said in-vehicle device. Examiner also has personal experience with the various claimed interface, connection, wireless, in-vehicle, or source devices. As a police radio or taxi cab operations observer, examiner has frequently observed the system or method of data communicating between at least one vehicle and at least one data processing resource. The claimed in-vehicle device installed in a vehicle, said in-vehicle device having a first wireless network interface is considered equivalent to a commonly known police or taxi cab radio having a wireless interface with a dispatcher. The claimed communication interface device, said communication interface device having a second wireless network interface, said second wireless

Art Unit: 3622

network interface data communicates with said first wireless network interface and a plurality of communication interfaces, said plurality of communication interfaces communicate data between said second wireless network interface and a source to effectuate data communication between said in-vehicle device and said source is considered equivalent to a police or taxi dispatcher using a wireless communication device to communicate with the police or taxi radio. The claimed communication interface device, said communication interface device having a wireless interface, said wireless interface communicates data wirelessly with an in-vehicle device, said in-vehicle device, said in-vehicle device being installed in a vehicle is again considered equivalent to the police or taxi cab radio. The claimed source, said source data communicates Edith said communication interface device wherein said in-vehicle device by way of said communication interface device data communicates with said source is again considered equivalent to the police or taxi radio dispatcher. The claimed communicating a plurality of content wirelessly between an in-vehicle device and a communication interface device, routing said plurality of content from said communication interface device to a source, determining at said source a plurality of return content, routing said plurality of return content to said communication interface device and communicating said plurality of return content wirelessly between said communication interface device and said in-vehicle device is considered equivalent to the two-way communications between the radio dispatcher and the police or taxi radio operator. The various claimed interface, connection, wireless, in-vehicle, or source devices are considered merely design choice of devices and are considered obvious variations of the devices commonly known to those skilled in



Art Unit: 3622

the art of police and taxi wireless radio communications. Overall the claimed invention is considered equivalent to old and well known steps observed by the examiner in police and taxi communication operations. The claimed invention contains automated features and are obvious variations to the examiner's experience that is so old and well known that the examiner will use Official notice to obviate that claimed subject matter. The claimed invention, recited by the applicant, has been provided examiner personal experience long before the filing of applicant's invention. Examiner notes that it is old and well known to those skilled in the art of a method and system of data communicating between at least one vehicle and at least one data processing resource, that it would have been obvious to claim the invention as recited by the applicant, in order to overcome the explicit teachings of examiner's personal experience discussed supra. It would have been obvious to one skilled in the art to provide the automated claimed system or method since those features are merely automated features of a concept that is old and well known. Please see *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958) in which the court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art. Furthermore the claimed invention has been part of examiner's experience except for the claimed wireless network connectivity interface, the claimed data processing resource, or the claimed digital content. Examiner considers the recited connectivity, data processing resource, or digital content to be obvious variations to normal radio airwave connectivity, communication source of data (processing resource), or analog content. To those skilled in the art that claimed subject

Art Unit: 3622

matter is an obvious variation to what is known to be functionally equivalent since both perform the claimed invention in the same way, using the same means or method to achieve the same result. Also the claimed wireless network connectivity interface, the claimed data processing resource, or the claimed digital content are merely representative information that are considered non-functional descriptive language. It would have been obvious to those skilled in the art of a method and system of data communicating between at least one vehicle and at least one data processing resource to use that term to seek patent protection. These non-functional descriptive language differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The recited connectivity, data processing resource, or digital content steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 32 F. 3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to claim video segments having any type of content, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention. The motivation to combine applicants claimed invention with the examiner's personal experience is to allow merchants greater consumer targeting capabilities, which clearly shows the obviousness of the claimed invention.

Art Unit: 3622

***Double Patenting***

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

19. Claims 1-19 and 21-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending Applications: 09/579,263 or 09/593,881 or 09/734,129 or 09/802,842. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending

Art Unit: 3622

applications process data and information communicatively in the same manner, using an obvious variation in terminology, to achieve the same result.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

20. Claims 1-19 and 21-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of US patent 6,389,337 or over claims 1-30 of US patent 6,505,095. Although the conflicting claims are not identical, they are not patentably distinct from each other because those patented claims processes data and information communicatively in the same manner, using an obvious variation in terminology, to achieve the same result.

***Conclusion***

21. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Steve Gravini whose telephone number is (703) 308-7570 and electronic transmission / e-mail address is "steve.gravini@uspto.gov". Examiner can normally be contacted Monday through Friday from 6:00 a.m. to 3:30 p.m. **If applicant chooses to send information by e-mail, please be aware that confidentiality of the electronically transmitted message cannot be assured.** Please see MPEP 502.02. Information may be sent to the Office by facsimile transmission. The Official Fax Numbers for TC-3600 are:

After-final	(703) 872-9327
Official	(703) 872-9326
Non-Official/Draft	(703) 872-9325

  
**STEPHEN GRAVINI**  
**PRIMARY EXAMINER**

smg  
March 18, 2003